



MAY 30 1995

Edwin M. Lee  
Director

HIV IN THE WORKPLACE TECHNICAL ASSISTANCE PROJECT

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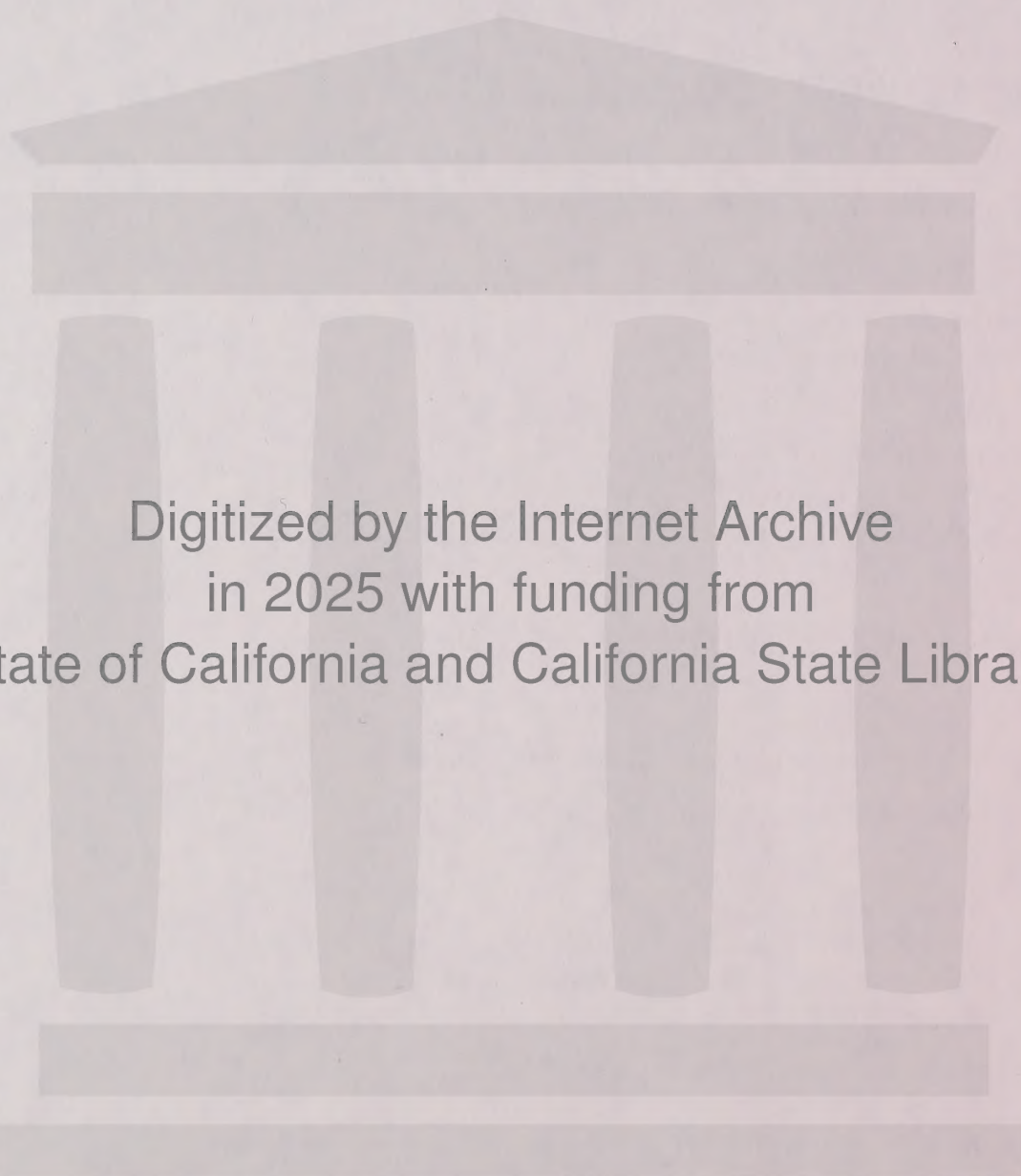
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4/1/95

## HIV IN THE WORKPLACE TECHNICAL ASSISTANCE PROJECT

### SAMPLE EMPLOYMENT NON-DISCRIMINATION POLICY

An employment non-discrimination policy is one which establishes that employees and applicants for employment who are members of a protected group will be treated fairly and equally with respect to all aspects of employment. The law specifies which groups must be protected, and some employers only prohibit discrimination against those groups. Others recognize that all individual characteristics which are not job related should be omitted from employment decision-making. The Human Rights Commission recommends implementing a non-discrimination policy which combines these two approaches by first listing specific protected categories and then extending non-discrimination protection to all non-job-related factors.

*It is Company policy to provide equal opportunity in employment, development and advancement for all qualified persons without regard to race, color, religion, age, sex, national origin, ancestry, physical or mental disability, medical condition, veteran status, marital status, HIV status, sexual orientation, gender identity,<sup>1</sup> or any other non-job-related factor. This policy applies to every aspect of employment, including, but not limited to: hiring, advancement, transfer, demotion, lay-off, termination, compensation, benefits, training and working conditions.*

This type of policy also can be extended to volunteers, contractors, clients and others who have formal relations with a business or agency. By developing and implementing non-discrimination and other policies, employers can effectively address the changing impact of HIV in the workplace while remaining mindful of their specific business needs and concerns.

**The San Francisco Human Rights Commission's HIV in the Workplace Technical Assistance Project assists employers and employees in responding to the impact of HIV in the workplace. For more information on the Project's consultation, policy development, training, technical assistance and referral services, contact the Human Rights Commission at (415) 252-2500.**

The information contained in this document is not intended as legal advice and the reader should not rely on it as such.

<sup>1</sup> As of January 30, 1995, employers in San Francisco and City contractors are prohibited from discriminating against employees on the basis of gender identity (e.g., transgender status). Therefore, the Commission recommends including "gender identity" in the list of characteristics upon which discrimination is prohibited.











11/19/95

## HIV IN THE WORKPLACE TECHNICAL ASSISTANCE PROJECT

### SAMPLE CLIENT NON-DISCRIMINATION POLICY

A client non-discrimination policy is one which establishes that clients will be treated fairly and equally with respect to receiving services from an agency or business. The law specifies that certain groups of people must be protected. Some service providers only prohibit discrimination against those groups and others recognize that all individual characteristics which are not related to receiving services should be omitted from decision-making. The Human Rights Commission recommends implementing a non-discrimination policy which combines these two approaches by first listing specific protected categories and then extending non-discrimination protection to all characteristics and factors that are not service-related.

*It is Agency policy to provide service to all qualified persons without regard to race, color, religion, age, sex, national origin, ancestry, physical or mental disability, medical condition, veteran status, marital status, HIV status, sexual orientation, gender identity,<sup>1</sup> or any other non-service-related factor. This policy applies to every aspect of service, including access to service, and the terms, conditions and benefits of service.*

By developing and implementing a client non-discrimination policy and other workplace policies, service providers and businesses can effectively address the changing impact of HIV in the workplace while remaining mindful of their specific organizational needs and concerns.

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11/9/93

## HIV IN THE WORKPLACE TECHNICAL ASSISTANCE PROJECT

## SAMPLE REASONABLE ACCOMMODATION POLICY

Federal and State laws require that, under certain circumstances, an employer accommodate an employee with a physical or mental disability so that the employee may continue to work. These laws clearly include people with AIDS and those who are HIV positive. Under the Americans with Disabilities Act (ADA), businesses with fifteen or more employees may be legally required to accommodate an employee with a disability. Under California law, an employer with five or more employees must accommodate an employee with a physical impairment. Under either law, if the employee is otherwise qualified to perform the essential tasks of a job, and if the cost of accommodating the employee's disability would not create an undue hardship on the company, accommodation is required. This legal concept is known as 'reasonable accommodation.'

The law makes it clear that it is up to the employee to ask for reasonable accommodation. Often, employees with HIV don't ask for accommodation because they don't know they are considered disabled by law, what the law entitles them to, or even what an accommodation is. Without this knowledge, the HIV positive employee becomes fearful of the repercussions of continued and perhaps increasing disability. As this employee's disability increases, his or her job performance is likely to diminish, which can lead the employer to take disciplinary action, including termination.

The ADA requires that employers post a notice describing the provisions of the ADA. (A poster is available from the Equal Employment Opportunity Commission.) In addition, implementing a specific reasonable accommodation policy is an important part of educating employees and management about HIV in the workplace.

The following sample policy sets out reasonable accommodation language:

*The Company pledges itself to a program of affirmative action aimed at assuring equality of employment opportunity and providing reasonable accommodations for the physical and mental limitations of job applicants and employees. No individual will be unlawfully discriminated against because of physical or mental disability. All employment and advancement decisions will be based solely upon the determination of each candidate's qualifications.*

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*The Company will make reasonable accommodations to the physical and mental limitations of employees or applicants for employment that do not impose undue hardship on the conduct of the business. In determining the extent of the Company's accommodation obligations, the following factors, among others, may be considered: (a) business necessity and (b) financial costs and expenses. Possible accommodation includes alterations, adjustments or changes in the job, the workplace and/or terms or conditions of employment which will enable an otherwise qualified individual with a disability to perform a particular job successfully, as determined on a case by case basis, depending on the individual's circumstances.*

Employers are allowed to make an independent assessment of an employee's entitlement to reasonable accommodation and may ask an employee seeking accommodation to provide documentation from his or her health care provider to verify the fact that the employee has a disability and to learn what accommodation is needed. While the law in this areas is still unsettled, to verify the validity of the employee's request, an employer may be entitled to know what disabling condition (diagnosis) the employee has. Because of the confidential nature of an individual's HIV status or other medical condition, the Human Rights Commission strongly encourages employers seeking to verify an employee's right to reasonable accommodation to do so *without* compelling disclosure of the employee's underlying diagnosis. (An examination by an independent physician could verify the existence of a disability without disclosing the employee's diagnosis.) When such disclosure is required, employees with an HIV-related disability may be able to limit their disclosure to what disabling condition they have (e.g., lymphoma) and keep confidential the fact that they are HIV positive or have an AIDS diagnosis.

Reasonable accommodation most often is thought of as requiring physical modification of a work site so that a disabled employee may gain access or mobility, for example as seen in the installation of a wheelchair ramp or elevator. For an employee with HIV/AIDS, reasonable accommodation may involve these types of physical changes. What is more common, however, are changes in work schedules and job responsibilities. Common accommodations for people with HIV/AIDS include: reduced work hours, time off for medical appointments, extra breaks during the day, reassignment of job responsibilities and transfer to a different job to reduce stress.

Many employers are surprised to learn that most accommodations cost less than \$100, and about one-third cost nothing at all. By developing and implementing reasonable accommodation and other workplace policies, employers can effectively address the changing impact of HIV while remaining mindful of their business needs and concerns.

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1/9/95

## HIV IN THE WORKPLACE TECHNICAL ASSISTANCE PROJECT

### SAMPLE LIFE-THREATENING ILLNESS POLICIES

The Human Rights Commission receives many calls each year from HIV positive employees seeking information regarding their rights in the workplace. Having workplace policies on employees with life-threatening illnesses may help reassure these employees, or employees with other life-threatening illnesses, by outlining their rights and responsibilities at work. In addition, such policies help management and coworkers address questions they may have about working with employees with HIV and AIDS.

Some companies include HIV in a general policy on life-threatening illnesses. This type of policy may serve to demonstrate to management and coworkers that an employee with HIV infection should be treated with the same compassion and consideration as an employee with any other life-threatening illness.

The following is an example of a general life-threatening illness policy:

*The company recognizes that employees with life-threatening illnesses - including but not limited to cancer, heart disease, and AIDS - may wish to continue to engage in as many of their normal pursuits as their condition allows, including work. As long as these employees are able to meet acceptable performance standards and medical evidence indicates that their conditions are not a threat to themselves or others, managers should be sensitive to their conditions and ensure that they are treated consistently with other employees. At the same time, the company seeks to provide a safe work environment for all employees and customers.*

*Consistent with this concern for employees with life-threatening illnesses, the company offers the following range of resources available through your Human Resources representative:*

- *Management and employee education and information on life-threatening illnesses;*
- *Referral to agencies and organizations that offer supportive services to employees, their families and friends directly or indirectly affected by life-threatening illnesses;*
- *Benefits consultation to assist employees in effectively managing health, leave, and other benefits.*





In addition to these policies, you may wish to develop guidelines to assist management in their enforcement efforts and to further address some of the concerns that may arise for employees with life-threatening illness and their coworkers.

Sample guidelines include:

1. *Remember that an employee's health condition is personal, should be treated as confidential, and reasonable precautions should be taken to protect information regarding an employee's health condition.*
2. *Contact your Human Resources representative if you believe that you or other employees need information about a life-threatening illness, or if you need further guidance in managing a situation that involves an employee with a life-threatening illness.*
3. *Contact your Human Resources representative if you have any concerns about the possible contagious nature of an employee's illness.*
4. *Contact your Human Resources representative if you believe a statement should be obtained from the employee's attending physician that continued presence at work will pose no threat to the employee, coworkers, or customers.*
5. *If warranted, provide reasonable accommodation, consistent with the business needs of the organization, for employees with life-threatening illnesses.*
6. *Make a reasonable attempt to transfer employees with life-threatening illnesses who request transfer as part of a request for reasonable accommodation.*
7. *Be sensitive and responsive to coworkers' concerns and emphasize employee education available through your Human Resources representative.*
8. *Give no special consideration beyond normal transfer requests to employees who feel threatened by a coworker's life-threatening illness.*
9. *Be sensitive to the fact that continued employment for an employee with a life-threatening illness may sometimes be therapeutically important in the remission or recovery process or may help to prolong that employee's life.*
10. *Encourage employees to seek assistance from established community support groups for medical treatment and counseling services. Information on these can be requested through a Human Resources representative.*



Some companies adopt policies that address HIV/AIDS separately. Unlike the policy above, some general policies on life-threatening illness fail to address some of the unique problems associated with HIV, such as confidentiality, coworkers' fear of contagion, and the susceptibility to discrimination which comes with the social stigmas associated with the HIV disease. An HIV/AIDS-specific policy addresses these unique concerns head on. This type of policy also can specify how protections extend to people *perceived* to have HIV/AIDS and those who *associate* with persons with HIV/AIDS.

The City and County of San Francisco has adopted an HIV/AIDS-specific policy for its employees. The following sample policy is based on the City's policy language:

*It is the policy of the Company to prohibit discrimination in the compensation, terms, conditions and privileges of employment on the basis that any employee or applicant for employment with the Company has, is perceived as having or has a history of having the conditions known as Acquired Immune Deficiency Syndrome (AIDS), Human Immunodeficiency Virus Infection (HIV infection) or any medical signs or symptoms related thereto.*

This policy is augmented by guidelines for implementation which include:

- 1. The current and best medical evidence is that AIDS and HIV infection do not pose a threat of contagion or transmission from worker to coworkers through everyday contact common in the work environment;*
- 2. AIDS and HIV infection are life-threatening illnesses, which may be regarded as disabilities under prevailing local, state, and federal law. Each individual responds differently to the illness in terms of ability to work. On this basis, as with all other disabilities, the Company is required to make reasonable accommodations to facilitate the ability of employees with AIDS or HIV infection to continue working as long as they desire and are able to perform the essential functions of the job with accommodation;*
- 3. Like all other medical information and records, the conditions of AIDS or HIV infection in an employee or applicant are subject to privacy protection and all employees have a right to the confidentiality of medical information. Company personnel having access to an individual's medical records or those having knowledge of a medical condition have a duty to preserve the privacy and confidentiality of the information. To that end, it is imperative that such information not be shared without the express and prior written permission of the individual having the condition;*



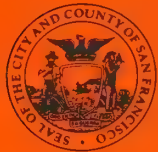
4. *In that employees with AIDS or HIV infection do not pose a threat of contagion to coworkers through everyday work place contact, the refusal by coworker(s) to work with an individual having or perceived to have AIDS or HIV infection can be considered insubordination, subject to due process disciplinary action in consideration of the specific facts and circumstances of the refusal. Similarly, members of the public with AIDS or HIV infection pose no threat of contagion to Company employees providing common services and the refusal of any Company employee to provide service on this basis can be grounds for disciplinary action;*
5. *The Company must treat AIDS and HIV infection as it would any other life threatening illness and must therefore apply and comply with all rules which govern employee health, including but not limited to leaves of absence, disability transfers and medical examinations. Under no circumstances shall an employee or applicant be required as a condition of pre-employment or employment to undergo any tests to detect the presence of the HIV antibody, antigen or virus;*
6. *Employees who are affected by any life threatening illness should be treated with compassion and understanding. Company personnel should provide support and encouragement and foster, by example, an attitude of sensitivity to the needs of chronically ill colleagues, recognizing that continued employment and interaction in the work environment can be physically, mentally and emotionally beneficial. Similarly, such compassion should be shown to employees who have a family member or significant other who has AIDS or HIV infection;*
7. *Given the fears that AIDS and HIV infection often inspire, the most effective way to avoid disruption and discrimination in the work place is to prepare and educate all employees. In fostering a rational, compassionate and non-discriminatory understanding of AIDS and HIV infection in the work place, departments should implement educational programs. These programs should be based on the best available medical knowledge, resources for employee support and Company policies and rules which apply to the issues of AIDS and HIV infection in the work place.*

By developing and implementing life-threatening illness and other policies, employers can effectively address the changing impact of HIV in the workplace while remaining mindful of their specific business needs and concerns.

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## HIV IN THE WORKPLACE TECHNICAL ASSISTANCE PROJECT

### SAMPLE CONFIDENTIALITY POLICIES

Whenever HIV or any other medical condition is at issue in the workplace, it is important that the confidential nature of this information is understood and that policies and procedures are put in place to maintain that confidentiality. California law requires that employers establish procedures to ensure the confidentiality of employee medical records and that such records not be disclosed without the employee's specific written authorization.<sup>1</sup> In addition, employees may pursue civil damages where an employer or manager discloses confidential medical information, including HIV status. Under no circumstances should an employer or manager require that an employee with AIDS or who is HIV positive disclose this to others.

The following is a sample policy addressing confidential employee information:

*Employees are not required to inform the Organization of the results of any HIV tests, whether they have taken an HIV test, or whether they been diagnosed with AIDS or with any other medical condition. The Organization respects the right to privacy of all employees and complies with applicable laws concerning confidentiality of medical information.*

A confidentiality policy should cover clients as well. All employees and volunteers (including members of an organization's Board of Directors) should be required to follow this policy. The Commission recommends that employees and volunteers be required to acknowledge, in writing, that they have received and read such a policy, and that they agree to follow it.

The following policy language addresses client confidentiality:

*The nature of our mission and work exposes employees and volunteers to highly sensitive and confidential information. In all of the dealings of the professional work of the Organization, employees and volunteers must be acutely aware at all times of their responsibility not to divulge any information that could be a breach of professional conduct. Special attention must be given*

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<sup>1</sup>Cal. Civ. Code §56.05 et seq. An exception is granted for the administration of certain employee benefit plans.





*to proprietary information, confidential data about clients, and personal and confidential information about employees, contract staff, members of the Board of Directors and other volunteers.*

*All employees, contract staff, volunteers and Board members must sign an Oath of Confidentiality before commencing activities in the program. This statement requires the signer to keep confidential the identity and all information about program participants (clients). It also prohibits unauthorized copying or removal of any client records or agency information.*

*Violation of this policy may result in termination of employment or volunteer participation, and may result in civil court action.*

*The following are general guidelines to protect the privacy of the people with HIV that the Organization serves:*

- Do not discuss any information about clients or agency internal affairs with anyone outside of the Organization except when required as part of your job duties.*
- If disclosure is necessary, clients should be informed prior to disclosure.*
- Do not leave any information, memos, letters or reports that identify a client, in open, public or uncontrolled areas.*
- Do not copy any client data or agency reports except when required as part of your job duties, and never remove client files or identifying data from the premises.*
- Be careful to protect the identity of clients receiving services when talking with outside persons, answering the phone, corresponding by mail, facsimile or electronic medium.*

By developing and implementing confidentiality and other policies, employers can effectively address the changing impact of HIV in the workplace while remaining mindful of their specific business needs and concerns.

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## HIV IN THE WORKPLACE TECHNICAL ASSISTANCE PROJECT

## LEGAL OVERVIEW

Federal, State and local laws govern the employment of people with disabilities, including people with HIV. These laws also describe how clients and customers with HIV must be treated and served. This fact sheet is designed to provide an overview of the law as it affects the rights and responsibilities of employers, employees, managers, service providers, clients and customers.

***Discrimination Against Employees with HIV is Illegal***

It is illegal to discriminate against employees and applicants for employment who have HIV, who associate with people with HIV, or who are perceived to have HIV. An individual need not have a disability to be protected. Discrimination means unfair or unequal treatment with respect to any aspect of employment, including hiring, advancement, transfer, demotion, lay-off, termination, compensation, training and working conditions.

***Employees with HIV May Be Entitled to Reasonable Accommodation***

The Americans with Disabilities Act (ADA) is a federal law that, under certain circumstances, requires businesses with fifteen or more employees to modify or adjust some aspect of a job or work environment so that an employee with a disability can be hired, continue to work, or have access to the same facilities and privileges as other employees. Under State law, employers with five or more employees are covered. This legal concept is known as reasonable accommodation.

It is up to the employee or job applicant to ask for reasonable accommodation. An employee seeking accommodation may have to provide documentation from his or her health care provider in order to verify the fact that the employee has a disability and to describe the nature of the accommodation needed. Because employers are allowed to make an independent assessment of an employee's right to reasonable accommodation, an employer also may be entitled to know what disabling condition the employee has. Employees with disabling HIV or AIDS might avoid disclosing their HIV status by instead disclosing what disabling condition they have (e.g., lymphoma).

As long as it accommodates the employee's disability, an employer may choose the accommodation that best meets business needs. Employers are not required to provide accommodation if the cost of doing so would create an undue hardship on their business. An undue hardship means that, relative to the size and type of business involved, the accommodation would be unduly costly, disruptive, or would fundamentally alter the nature or operation of the business.

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## ***Discrimination Against Clients and Customers is Against the Law***

Anyone who owns or operates a public accommodation, or who leases (or leases to) a public accommodation, may not discriminate against a person with HIV in providing goods and services to them. This includes the opportunity to use or benefit from the service or business, equality of benefits or services, and benefits or services that are not different or separate from those received by others. Almost all businesses are public accommodations. All service providers (including AIDS service organizations), sales and rental establishments, all places of education, all places selling food or providing lodging, and all places of recreation are covered. Under certain circumstances, some private clubs and religious organizations may be exempt. Laws governing public accommodations protect people with HIV (whether or not they are symptomatic), people perceived to have HIV and people who associate with people with HIV, such as a partner, caregiver, or child.

## ***Clients & Customers with HIV May Be Entitled to Reasonable Accommodation***

Under certain circumstances, a public accommodation must modify its practices, or provide aids and services to assist a person with HIV, if to do so would make it possible for that person to use the goods and services. If making a modification or providing assistance would fundamentally alter the nature of the goods or services being offered, or place an undue burden on the business, then accommodation is not required under the law.

## ***Confidentiality of Medical Information is Required By Law***

The law requires that employers establish procedures to ensure the confidentiality of employee medical records. Such records can only be disclosed to supervisors and managers when an accommodation is at issue. Otherwise, disclosure should only take place with the employee's specific written authorization. Under no circumstances should an employer require that an employee disclose his or her HIV status to others.

## ***HIV Status Testing and Inquiries***

Under the ADA, medical examinations and inquiries of employees are permitted only after a conditional job offer has been made and only if the exam or inquiry is made to all similarly situated applicants. Under San Francisco law, HIV testing or inquiries of employees may only occur if the employer can show a job-related reason for doing so. In most cases, HIV testing and inquiries of clients and customers is prohibited. Clients of AIDS service organizations may need to show proof of HIV status to be eligible for service. In limited circumstances, medical necessity may allow for HIV testing or inquiry.

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## HIV IN THE WORKPLACE TECHNICAL ASSISTANCE PROJECT

## REASONABLE ACCOMMODATION FACT SHEET

Federal and State laws require that, under certain circumstances, an employer accommodate an employee with a disability so that the employee may continue to work. These laws include people disabled due to HIV and AIDS. This fact sheet is designed to help you understand what reasonable accommodation is, who is entitled to it, how to get it, and what it might look like for people who are HIV positive.

***What is Reasonable Accommodation?***

The Americans with Disabilities Act (ADA) is a federal law which states that all businesses with fifteen or more employees may be legally required to modify or adjust some aspect of a job or work environment so that an employee with a disability can (1) be hired, (2) continue to work, or (3) have access to the same facilities and privileges as other employees. Under State law, employers with five or more employees are covered. This legal concept is known as reasonable accommodation.

***Who is Entitled to Reasonable Accommodation?***

To be eligible for reasonable accommodation, an employee or job applicant must be disabled and be qualified to do the essential functions of a job. The essential functions of a job are the fundamental job duties. An employee or applicant is qualified to perform the essential job functions if he or she satisfies the experience, education or other job related requirements of the position, even if he or she can only do so with reasonable accommodation. For example, someone who has the typing skills required for a word processing job, and who has a visual impairment, would be considered qualified for the job even if he needs a large print computer screen to do the job.

***When Can a Request For Reasonable Accommodation Be Denied?***

While most accommodations cost less than \$100, and about one-third cost nothing at all, employers are not required to accommodate employees or job applicants if the cost of doing so would create an undue hardship on their business. An undue hardship exists if, relative to the size and type of business involved, the accommodation would be unduly costly, disruptive, or would fundamentally alter the nature or operation of the business. For example, an agency with a small budget might face an undue hardship if asked to install an elevator so that an employee could reach its second floor office.

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## ***How Does an Employee or Job Applicant Get Accommodated?***

It is up to the employee or job applicant to ask for reasonable accommodation.

## ***Does the Employee Have to Disclose What His or Her Disability Is?***

The law does not clearly answer this question. We know that an employer may ask an employee seeking reasonable accommodation to provide documentation from his or her health care provider in order to verify the fact that the employee has a disability and to describe the nature of the accommodation needed. But because employers are allowed to make an independent assessment of an employee's right to reasonable accommodation, an employer also may be entitled to know what disabling condition the employee has. When such a request is made, employees with disabling HIV or AIDS might avoid disclosing their HIV status by instead disclosing what disabling condition they have (e.g., lymphoma). For employees with HIV who are asymptomatic and who are seeking accommodation (for example, time off from work to attend medical appointments), disclosure of HIV status may be unavoidable. In either case, employees seeking to keep their HIV status confidential are encouraged to first disclose that they have a disability. If this disclosure (with proper documentation from a health care provider) does not satisfy the employer, disclosure of HIV status may be unavoidable.

## ***Can Employees Get Whatever Reasonable Accommodation They Want?***

No. As long as it accommodates the employee's disability, employers may choose the accommodation that best meets their business needs. For example, an employee with HIV may request a transfer to a less stressful position, but the employer may instead restructure the employee's job in order to reduce the level of stress associated with it.

## ***What Does Reasonable Accommodation Mean for People With HIV/AIDS?***

Reasonable accommodation most often is thought of as requiring physical modification of a work site so that a disabled employee may gain access or mobility, for example as seen in the installation of a wheelchair ramp or elevator. For an employee with HIV/AIDS, reasonable accommodation may involve these types of physical changes. More common, however, are changes in work schedules and responsibilities. Common accommodations include: reduced work hours, time off for medical appointments, extra breaks during the day, reassignment of job responsibilities and transfer to a different job to reduce stress.

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## HIV IN THE WORKPLACE TECHNICAL ASSISTANCE PROJECT

## MEDICAL INQUIRIES AND CONFIDENTIALITY FACT SHEET

***I Just Found Out I'm HIV Positive; Do I Have to Tell My Employer?***

No. You don't have to tell your employer that you are HIV positive. Unless you are seeking reasonable accommodation for a disability, you are not obligated to tell your employer anything about your HIV status. Some people choose to tell their employer about their HIV status because they feel comfortable that discrimination will not occur and that their employer will be supportive and empathic.

***What Must I Tell My Employer When I Ask for Reasonable Accommodation?***

The law does not clearly answer this question. We know that an employer may ask an employee seeking reasonable accommodation to provide documentation from his or her health care provider in order to verify the fact that the employee has a disability and to describe the nature of the accommodation needed. But because employers are allowed to make an independent assessment of an employee's right to reasonable accommodation, an employer also may be entitled to know what disabling condition the employee has. When such a request is made, employees with disabling HIV or AIDS can try to avoid disclosing their HIV status by instead disclosing what disabling condition they have (e.g., lymphoma). For employees with HIV who are asymptomatic and who are seeking accommodation (for example, time off from work to attend medical appointments), disclosure of HIV status may be unavoidable. In either case, employees seeking to keep their HIV status confidential are encouraged to first disclose that they have a disability. If this disclosure (with proper documentation from a health care provider) does not satisfy the employer, disclosure of HIV status may be unavoidable.

***How Confidential Is Medical Information Kept By My Employer?***

The law requires that employers establish procedures to ensure the confidentiality of employee medical records. Employers must keep these records in separate files from other personnel records. Medical information may be disclosed to supervisors and managers only when the information is about necessary restrictions of the work or duties of the employee or about necessary accommodations. Otherwise, disclosure should only take place with the employee's specific written authorization. An employer should never require that an employee disclose his or her HIV status to others.

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### ***When I Apply For A Job, Can I Be Asked If I Am HIV Positive Or If I Have A Disability?***

No. An employer cannot ask you about the existence, nature, or severity of a disability or medical condition. An employer may only ask about your ability to perform specific job-related functions. For example, an employer may state that a job requires lifting fifty pounds and climbing ladders and then ask you whether you can do these tasks either with or without reasonable accommodation.

### ***When I Apply For a Job, Can I Be Required To Take a Medical Exam?***

Under certain circumstances, an employer may require that a job applicant take a medical examination. An employer may require a medical exam or make medical inquiries only after a job offer has been made and only if the same medical exam is given to all applicants offered that position. The employer may not withdraw the job offer after the examination based on the applicant's disability unless the employer proves the disability prevents the applicant from performing an essential function of the job, even with reasonable accommodation.

### ***If I'm Already Working, Can My Employer Require a Medical Exam?***

If you are already working, the Federal law states you can only be forced to undergo a medical examination if your employer proves that the test is job-related. The exam must be necessary in order to determine whether you can do your job.

### ***Can My Employer Require That I Take An HIV Test?***

Under the Federal Americans with Disabilities Act (ADA), an employer can ask a job applicant to take an HIV test under the same conditions as for other medical examinations. However, under San Francisco law, HIV testing of employees or job applicants is prohibited unless the employer can show a legitimate, job-related reason for testing. Because the ADA allows local governments to pass laws granting broader rights than those established by the ADA, San Francisco law governs in the area of HIV testing.

***The San Francisco Human Rights Commission's HIV in the Workplace Technical Assistance Project assists employers and employees in responding to the impact of HIV in the workplace. For more information on the Project's consultation, policy development, training, technical assistance and referral services, contact the Human Rights Commission at (415) 252-2500.***

The information contained in this document is not intended as legal advice and the reader should not rely on it as such.





## HIV IN THE WORKPLACE TECHNICAL ASSISTANCE PROJECT

## FAMILY AND MEDICAL LEAVE ACT FACT SHEET

The Federal Family and Medical Leave Act of 1993, and the California Family Rights Act of 1991, describe circumstances under which employees may take a leave of absence from their jobs and be guaranteed the right to return to work. Employers are required to notify their employees of the basic provisions of these laws.

***What is Family Leave?***

Family Leave laws give certain employees up to 12 weeks of unpaid leave from work per 12 month period, due to the serious health condition of the employee, the employee's child, parent or spouse, or due to the birth, adoption or foster care of a child.

***Which Employees Are Eligible For Leave?***

Employees are eligible for leave if they have worked for their present employer for at least 12 months and have worked at least 1,250 hours for that employer during the previous 12 months.

***What is Considered a Serious Health Condition?***

A serious health condition is a physical or mental condition that involves inpatient care in a hospital, hospice, or residential care facility, or continuing treatment by a health care provider. An employer may request reasonable medical documentation of the serious health condition to verify whether an employee is eligible for leave.

***Which Employers Must Provide Leave?***

Employers with 50 or more employees are covered by the law. An employer with multiple work sites is covered by the law as long as 50 or more employees work within seventy-five miles of the employee requesting the leave. Employers who employ fewer than 50 employees during twenty or more work weeks per year are exempt.

***What Does the Law Mean to Employers with Fewer than 50 Employees?***

While employers with fewer than 50 employees are not required to provide leave, many do so on a voluntary basis. This is especially true of community based organizations seeking to accommodate employees facing serious health problems.

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## ***Can An Employer Expand the Definition of “Family” to Include Domestic Partners?***

Many employers wish to offer equitable benefits to their employees and recognize that some families do not fit into the definition offered by the law. By implementing internal policies and procedures, these employers can broaden the definition of family to include domestic partners and their children. Some employers extending coverage to domestic partners request documentation of the partnership, such as an affidavit declaring mutual support, or registration with a city government Domestic Partnership Registry.

## ***Under What Conditions Does the Employee Return to Work?***

An employee returning to work from a leave must be returned to the same position held when the leave began or to an equivalent position. An equivalent position is one with equal benefits, pay, and other terms and conditions of employment. Employees within the top 10% of salaried employees (by compensation) can be denied the right to return to work if to do so would create a hardship to the employer and if the employee was given notice prior to the leave that job restoration would not take place.

## ***What Benefits Do Employees Receive Under the Law?***

In addition to receiving 12 weeks of unpaid leave and the right to return to work, an employee may maintain group health care coverage during the leave. Under this provision, the employer and the employee must each pay the portion of the health insurance premium that each paid prior to the leave. (This coverage is not COBRA continuation coverage.)

## ***What About Other Forms of Available Leave?***

An employee may elect, or an employer may require, that an employee substitute available paid leave, such as sick leave, unused vacation or personal leave, for any part of the 12 weeks of unpaid family leave.

## ***How Do the Federal and State Laws Affect Each Other?***

After the federal law was enacted, the California law was changed to be more compatible with the federal law. In general, the federal law preempts state law. However, covered employers remain responsible for knowing and implementing the provisions of both laws because the federal law does not preempt more generous provisions of the state law.

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Edwin M. Lee  
Director

## HIV IN THE WORKPLACE TECHNICAL ASSISTANCE PROJECT

## SERVING CLIENTS AND CUSTOMERS WITH HIV

The Americans with Disabilities Act (ADA), as well as other Federal, State and local laws, prohibit businesses and service providers from discriminating against customers and clients with disabilities, including HIV and AIDS. With an emphasis on the comprehensive Americans with Disabilities Act, this fact sheet is designed to help business owners and service providers learn how to comply with the law.

***Which Businesses and Service Providers are Covered by the ADA?***

Almost every type and size of business and service provider is covered by the ADA. The law describes these entities as public accommodations, and covers all service providers, sales and rental establishments, all places of education, all places selling food or providing lodging, and all places of recreation. This includes health care providers, counseling centers, hotels, restaurants, movie theaters, all types of stores, and homeless shelters. Government entities, services and programs also are covered. Only certain religious organizations and some private clubs are exempt.

***What Does the ADA Prohibit?***

Under the ADA, anyone who owns or operates a public accommodation, or who leases (or leases to) a public accommodation, may not discriminate against a person who has or is perceived to have a disability, in providing goods and services to them. This includes the opportunity to use or benefit from the service or business, equality of benefits or services, and benefits or services that are not different or separate from those received by others. For instance, it would be unlawful if:

- A person with HIV was not allowed to eat in a restaurant, shop in a store, or get her tooth filled by a dentist (Opportunity);
- People with AIDS are given haircuts by salon trainees instead of licensed beauticians (Equality);
- A person with AIDS and his friend were not allowed to sit in the window seats in a restaurant (Different or Separate).

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### ***Who is Covered by the ADA?***

The ADA covers people with AIDS, people with HIV whether or not they are symptomatic, and people perceived to have HIV or AIDS. The ADA also covers people who associate with people with HIV or AIDS, such as a caregiver, partner, spouse, friend or child.

### ***Must a Service Provider or Business Accommodate People with Disabilities?***

Under certain circumstances, a public accommodation must modify its policies, practices, and procedures, or provide physical aids and services to assist a person with a disability, if to do so would make it possible for the person with a disability to access goods and services. Examples of accommodations possible under the law include:

- Suspending a policy banning clients who miss appointments for a client with AIDS-related dementia;
- Allowing a seeing eye dog into a restaurant with a “no pets” policy;
- Providing written organizational materials in Braille;
- Providing a sign language interpreter for a deaf patient at a doctor’s office.

### ***When is Accommodation Not Required?***

If making a modification or providing assistance would fundamentally alter the nature of the goods or services being offered, or place an undue burden on the service provider or business, then accommodation is not required under the law. Under the law, an “undue burden” is an action that imposes a “significant difficulty or expense” on the business or service provider.

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11/9/95

**HIV IN THE WORKPLACE TECHNICAL ASSISTANCE PROJECT**

**REFERRAL GUIDE**

**LEGAL SERVICES**

**AIDS Legal Referral Panel**

**(415)291-5454**

114 Sansome Street, Suite 1129  
San Francisco, CA 94104

Provides referrals for people with HIV, or with problems related to HIV, to a panel of volunteer attorneys. Free referral, some services and one hour of consultation free.

**San Francisco Human Rights Commission**

**(415)252-2500**

25 Van Ness Avenue, Suite 800  
San Francisco, CA 94102-6033

Investigates and mediates complaints of discrimination based on HIV status in employment, public accommodations and housing. Free. Call for appointment.

**California Department of Fair Employment and Housing**

**(800)884-1684**

30 Van Ness Avenue, Suite 3000  
San Francisco, CA 94102

Investigates complaints of discrimination based on HIV in employment, public accommodations and housing.

**Equal Employment Opportunity Commission (EEOC)**

**(415)744-6500**

Federal agency that investigates complaints of employment discrimination based on HIV.

**Bar Association of San Francisco**

**(415)764-1616**

**Volunteer Legal Services Program (VLSP)**

Provides consultation to non-profit organizations on topics including personnel policies and incorporation process. Free.

**TRAINING AND EDUCATION**

**World Institute on Disability**

**(510)763-4100**

**AIDS/HIV Disability Project**

**(510)208-9493 TTY**

510 Sixteenth St., Suite 100  
Oakland, CA 94612-1500

Provides training on reasonable accommodation, legal issues, and AIDS education to employers, AIDS service providers and other interested groups.



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## **INFORMATION AND TECHNICAL ASSISTANCE**

### **Job Accommodation Network**

**(800)526-7234**

Provides free consultation to employers on designing individualized job accommodations.

### **Pacific Disability and Business Technical Assistance Center**

440 Grand Avenue, Suite 500  
Oakland, CA 94610

**(800)949-4232 Voice/TDD**

Provides information, problem solving assistance and referrals to individuals and entities on implementing the Americans with Disabilities Act.

### **Centers for Disease Control**

**(800)458-5231**

### **National AIDS Clearinghouse**

**(800)243-7012 TDD**

P.O. Box 6003

Rockville, MD 20849-6003

Open 9:00 a.m. - 7:00 p.m. EST

Provides referral, reference and distribution for HIV/AIDS-related information, including access to databases and electronic bulletin boards.

### **Department of Fair Employment and Housing Communications Center**

**(800)884-1684**

Provides advice, technical assistance and literature to employers and employees on the Fair Employment and Housing Act and reasonable accommodation.

## **BENEFITS MANAGEMENT**

### **AIDS Legal Referral Panel (see Legal Services) Insurance and Employee Benefits Clinic**

**(415)291-5454**

Provides individual legal advice on public and private insurance, employee benefits and personnel policy interpretation. Thursday evenings. Free. Appointment required.

### **AIDS Benefits Counselors**

**(415)558-9845**

470 Castro Street, Suite 202

San Francisco, CA 94114

Provides advice and assistance on private and public insurance, and employee benefits to persons with HIV. Free. Call for appointment.

### **San Francisco AIDS Foundation Financial Benefits Program**

**(415)864-5855**

25 Van Ness Avenue, Suite 660

San Francisco, CA 94102

Provides pre- and post-disability benefits counseling and advocacy. New clients must schedule an intake appointment and must provide documentation of San Francisco residency and symptomatic or disabling HIV or AIDS.